

<p><b>Docket Number:</b> <u>58-0101-0904</u>  <b>Effective Date:</b> <u>2011 Sine die</u>  <b>Rules Title:</b> <u>Rules for the Control of Air Pollution in Idaho</u>  <b>Agency Contact and Phone:</b> <u>Martin Bauer, 373-0440</u></p>	<p style="text-align: right;"><b>Public Notice</b></p> <p><b>Hearings:</b> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>  <b>Locations and Dates:</b> N/A  <b>Written Comment Deadline:</b> 9/1/10</p>
<p><b>Descriptive Summary of Rule as Initially Proposed:</b>  The Department of Environmental Quality (DEQ) has initiated this rulemaking in response to a Petition for Initiation of Rulemaking filed by Idaho Conservation League (ICL) and P4 Production, LLC (P4). In the petition, ICL and P4 requested that the Board of Environmental Quality direct DEQ to initiate negotiated rulemaking to solicit public comment and involvement in developing air quality rules designed to limit and control mercury emissions from certain facilities. The petition was granted by the Board on July 29, 2009.</p> <p>A "white paper" providing assistance in understanding and achieving compliance with the requirements of these rules is attached.</p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment <i>sine die</i> of the First Regular Session of the Sixty-first Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p><b>Negotiated Rule Making:</b> <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span>  <b>Groups Involved:</b> Sign-in sheets attached.</p>
	<p><b>Costs To the Agency:</b> None anticipated.</p> <p><b>Costs To the Regulated Community:</b> It is anticipated that P4 Production, LLC will be the only existing source that may incur costs associated with installing pollution control equipment to reduce mercury emissions. New sources, or sources that propose a modification to an existing source, that propose to emit mercury above a threshold amount yet to be determined may also be required to install mercury control equipment. Sources close to a mercury threshold yet to be determined may incur costs associated with estimating mercury emissions.</p>
	<p><b>Relevant Statutes:</b> Sections 39-105 and 39-107, Idaho Code</p> <p><b>Idaho Code § 39-107D Statement:</b> See attached.</p> <p><b>Fiscal Impact Statement:</b> The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.</p>

Temporary Rule

- ☐ Necessary to protect public health, safety or welfare  
☐ Compliance with deadlines in amendments to governing law or federal programs  
☐ Conferring a benefit

Docket Number: 58-0101-0904

Section	Section Title	Summary of Rule Changes Based on Public Comment
006.	<b>General Definitions.</b>	The proposed rule has not been changed. See attached Response to Comments.
	<b>Mercury.</b>	
	<b>Mercury Best Available Control Technology (MBACT).</b>	
215.	<b>Mercury Emission Standard for New or Modified Sources.</b>	
221.	<b>Category I Exemption.</b>	
401.	<b>Tier II Operating Permit.</b>	
585.	<b>Toxic Air Pollutants Non-Carcinogenic Increments</b>	

**IDAHO CODE SECTION 39-107D STATEMENT:** *(1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under [chapter 52, title 67](#), Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.*

The proposed rule is not more stringent than federal law. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, incorporate U.S. EPA regulations that address mercury. See IDAPA 58.01.107.03.i. Sources within a source category subject to regulation under federal mercury rules are specifically exempt from this proposed rule. See IDAPA 58.01.01.215.01 and 401.02.b (proposed rule). Thus, the proposed rule does not propose a more stringent standard, emission limit or control technology requirement than specifically prescribed by the federal Clean Air Act or the U.S. EPA. The proposed rule does address mercury emissions from sources whose mercury emissions are not regulated under federal law. It requires that best available control technology be installed on new or modified sources with the potential to emit mercury, or existing sources with actual emissions of mercury, at certain threshold levels. An argument could be made that the proposed rule is broader in scope than federal law, as it does regulate an activity not regulated by federal law.

*(2) To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize:*  
*(a) The best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and*

Mercury is widely recognized as a toxic element with significant health effects (particularly neurological effects on developing fetuses). (Clarkston 2006, EPA 2001, EPA 2009) It has been recognized as a hazardous air pollutant by Congress (under the Clean Air Act) and EPA. Regulations have been promulgated at the federal and state level to minimize mercury emissions. (EPA 2005b, NDEP 2006, DNR 2008) Deposition of mercury air emissions can eventually lead to bio-accumulation of mercury (as methylmercury) in fish which can lead to human exposure from fish consumption. (Mason, 1995)

*(b) Data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justify use of the data.*

Idaho DEQ has collected data in order to characterize the extent of mercury contamination throughout Idaho. (DEQ 2007b, DEQ 2008, DEQ 2009). All data collection events have followed a Quality Assurance Project Plan. The fish sampling performed by IDEQ has resulted in 19 fish advisories across the state.

*(3) Any proposed rule subject to this section which proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under [chapter 52, title 67](#), Idaho Code, the following additional information:*

*(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects; and*

The population at risk are those who eat fish caught in the state of Idaho. Of particular concern are women of childbearing age, those pregnant, planning to become pregnant, or nursing; and children under the age of 15. (IFCAP 2009) There is also an ecological risk to fish and other species that eat fish.

*(b) Identification of the expected risk or central estimate of risk for the specific population or receptor; and*

The expected risk from mercury exposure are neurological. This is consistent with recent federal and other state analyses. Several studies have been performed that evaluate the IQ decrements among kids of fish eating populations.

*(c) Identification of each appropriate upper bound or lower bound estimate of risk; and*

A person's risk depends on a number of factors including: the amount of Idaho fish consumed, the size of the fish, and the source of the fish. (IFCAP 2009) There is also risk from eating non-Idaho fish including store-bought fish.

*(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and*

There are three major studies that have documented the health outcomes from eating fish contaminated with methyl mercury. Two of them (Faroe Islands and New Zealand) document evidence of in utero neurological impacts from low level exposures to methyl mercury.(Grandjean 1997, Crump 1998) Another study from the Seychelles does not support this conclusion. (Myers 2003) The National Research Council believes that when all of the data is considered there is still enough evidence to minimize low-level exposure to methyl mercury. (Stern 2004) This is the position taken by EPA when they promulgated CAMR and when they developed an oral reference dose for mercury. (EPA 2005b, EPA 2009) There have also been recent articles that discuss the mitigation of the neurological effects of mercury by selenium. This is an area of active research and no scientific consensus has been determined. (Peterson 2009)

DEQ acknowledges that one cannot technologically conclude that a specific reduction of mercury emissions from a local source will result in a specific reduction of mercury in Idaho's fish. This proposed rule constitutes Idaho's best effort to ensure that significant sources of mercury emissions employ the best available control measures. As a result, the state can conclude it is doing its best to reduce its impact on the global pool of mercury emissions, which do in fact impact Idaho's resources.

*(e) Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.*

The studies known to DEQ are listed above. See response to (d) above.

**Rules for the Control of Air Pollution in Idaho**  
**Docket No. 58-0101-0904**

**Response to Public Comments**

Commenter	Comment	DEQ Response
<p>Donald R. Wind Environmental Protection Manager P4 Production, LLC P.O. Box 816 Soda Springs, ID 83276</p>	<p>I am writing on behalf of P4 Production, L.L.C. ("P4") in support of the proposed regulation to limit and control mercury emissions from certain facilities. P4, together with the Idaho Conservation League, filed a petition before the Board of Environmental Quality requesting that the Department of Environmental Quality (the "Department") enter into a negotiated rulemaking process to develop the subject proposed regulation. Representatives of P4 were actively involved in the negotiated rulemaking process. P4 appreciates the time and effort that the Department and its staff devoted to the negotiated rulemaking. We were encouraged by the frank and thorough discussions during the process and believe that the proposed regulation represents an appropriate and reasonable mechanism for regulating industrial emissions of mercury in Idaho. P4, therefore, encourages the Department to present the final proposed regulation to the Board of Environmental Quality for adoption as a pending rule. P4 looks forward to final action on this proposal.</p>	<p>This comment is in support of the rule and requires no response. DEQ appreciates the support.</p>
<p>Chelly Reesman Environmental Engineer J.R. Simplot Company P.O. Box 27 Boise, ID 83707</p>	<p>The J.R. Simplot Company (Simplot) submits this letter in support of the rulemaking recently proposed by the Department in response to the Petition for Initiation of Rulemaking granted by the Department of Environmental Quality Board on July 29, 2009. Since approval of that petition, interested stakeholders and representatives of the Department participated in several constructive negotiated rulemaking sessions resulting in this proposal. Simplot recognizes and appreciates the time and energy committed by the Department to accomplish this rulemaking.</p> <p>In particular, Simplot supports the exemption set forth for new or modified stationary sources within a source category subject to 40 CFR Part 63. The exemption confirms that appropriate control of mercury emissions for certain categories of sources is determined in the Environmental Protection Agency's federal rulemaking process. The exemption also confirms that mercury emissions from facilities in those federal source categories are not subject to additional review by the Department. Simplot's Don Plant in Pocatello, Idaho, is covered by two such source categories, Phosphoric Acid</p>	<p>This comment is in support of the rule and requires no response. DEQ appreciates the support.</p>

Commenter	Comment	DEQ Response
	<p>Manufacturing Plants and Phosphate Fertilizer Production Plants. Additional review of mercury emissions by the Department would be an inefficient use of limited Idaho resources, provide minimal (if any) benefit to the environment, and potentially have the regulated community be subject to duplicative and conflicting requirements. The proposed rule recognizes that EPA's establishment of emission requirements under 40 CFR Part 63 includes a review of mercury emissions from a number of source categories and the establishment of appropriate controls and limits as warranted by a review of actual emissions and controls. We appreciate the Department's inclusion of the exemption to prevent duplicate review and regulation for our operations.</p>	

## **Implementation Scenarios**

1. New source or facility
  - a. If potential to emit (PTE)  $\geq 25$  lbs Hg – Permit to Construct (PTC) MBACT per Section 215
  - b. If actual emissions  $> 62$  lbs Hg – Combo PTC Tier II MBACT per Section 401.02.ii
2. Existing facility – Current actual Hg emissions  $\leq 62$  lbs
  - a. New Source or Modification PTE  $\geq 25$  lbs Hg – PTC MBACT per Section 215
  - b. New Source or Modification PTE  $< 25$  lbs Hg and result in actual Hg emissions  $> 62$  lbs – Tier II MBACT per Section 401.02.ii, application due within 12 months
  - c. New Source or Modification PTE  $\geq 25$  lbs Hg and results in actual Hg emissions  $> 62$  lbs – PTC MBACT per Section 215 and Tier II MBACT per Section 402.02.ii, application due within 12 months
  - d. Modification of emission unit currently subject to PTC MBACT – determine if MBACT determination made within preceding 10 years and remains valid (emission standard based on current maximum degree of reduction mercury emissions practically achievable in accordance with MBACT definition)
    - i. If MBACT remains valid
      1. Not subject to MBACT review if modification does not require change to Hg limit
      2. Subject to MBACT review if modification requires change to Hg limit
    - ii. If MBACT is no longer valid, modification subject to PTC MBACT
3. Existing facility – Current actual Hg emissions  $> 62$  lbs
  - a. New Source or Modification PTE  $\geq 25$  lbs Hg – Combo PTC MBACT per Section 215 and Tier II per Section 401.02.ii
  - b. New Source PTE  $< 25$  lbs Hg
    - i. New Source doesn't affect a Tier II MBACT source, add new source to Tier II upon renewal
    - ii. New Source affects a Tier II MBACT source, Combo PTC MBACT per Section 215 and modification of Tier II to include new source prior to operation of new source
  - c. Modification PTE  $< 25$  lbs Hg

- i. Modification of emission unit subject to MBACT – determine if MBACT determination made within preceding 10 years and remains valid
  - 1. If MBACT is remains valid
    - a. Revise Tier II permit at renewal, as needed, if modification does not require change to Hg limit
    - b. Subject to MBACT review if modification requires change to Hg limit
  - 2. If MBACT is no longer valid, modification Combo PTC MBACT and modification to Tier II
- d. Upon second renewal of Tier II containing MBACT limits
  - i. If no proposed modification to MBACT sources, no new MBACT review
  - ii. Except as other provided above, if modifications subject to MBACT processed within 10 years of initial MBACT determination, no new MBACT review

It should be noted that an MBACT determination differs from the Clean Air Act's BACT as defined in 40 CFR 52.21 as an MBACT determination remains valid for 10 years even if the source subject to MBACT is modified so long as the requirements of the existing MBACT are met. Persons are encouraged to contact DEQ with any questions regarding these rules or any of the above implementation scenarios.



## MEETING SIGN-IN SHEET

Meeting Title: **NEGOTIATED RULEMAKING**

Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0904

Meeting Date and Location: 10/28/09 – Boise, Idaho

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## MEETING SIGN-IN SHEET

Meeting Title: **NEGOTIATED RULEMAKING**

Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0904

Meeting Date and Location: 1/6/10 – Boise, Idaho

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## MEETING SIGN-IN SHEET

**Meeting Title: NEGOTIATED RULEMAKING**

**Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0904**

**Meeting Date and Location: 4/29/10 – Boise, Idaho**

**Phone participation: 373-0101/bridge 1**

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Jayson Runk	<del>name</del> IACI	
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## MEETING SIGN-IN SHEET

Meeting Title: **NEGOTIATED RULEMAKING**

Rules for the Control of Air Pollution in Idaho, Docket No. 58-0101-0904

Meeting Date and Location: 6/10/10 – Boise, Idaho

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